

ALLQUEST ADMINISTRATIVE SERVICES, LLP, **PLAINTIFF,**
VS. **CIVIL ACTION NO. 2:07CV096-P-A**
CLEVELAND PCH RESIDENTIAL LIVING, LLC, **DEFENDANT.**

Account of the Surplus Fund. However, Cleveland PCH appears to concede in its briefing that the fund still exists as a sub-account of the Surplus Fund which is still referenced in the second and third trust indentures.

Fourth, the Note set the maturity date of the loan for March 13, 2033. In the original Note, the principal was \$424,000 and the interest rate was 7%. On August 19, 2004 the parties executed a Note Modification Agreement which only modified the principal to \$400,000 and the interest rate to 5%.

Fifth, neither the Note nor the Note Modification Agreement contains or refers to an acceleration clause.

Sixth, it is undisputed that the subject property has been running at a loss since the effective date of the March 13, 2003 Note and that Cleveland PCH has never made “an amount, if any, such that after the transfer of such amount, the Insured Asset/Liability Ratio is 101%.”

Seventh, AllQuest has cited no persuasive or mandatory authorities for the proposition that the loan should be accelerated on principals of law or equity.

Accordingly, since the express language of the Note limits payments to moneys from the amounts over an Insured Asset/Liability Ratio of 101%, neither interest nor principal payments on the Note are due. This will remain the case until: (1) Cleveland PCH has an Insured Asset/Liability Ratio over 101%, in which case they must pay interest payments semiannually on January 1 and July 1 over the life of the loan; (2) March 13, 2033 when the entire principal plus remaining interest is due or another of the conditions in the Note are met for prepayment of the principal.

IT IS THEREFORE ORDERED AND ADJUDGED that:

(1) Allquest Administrative Services, LLP’s motion for summary judgment [21] is

DENIED;

(2) Cleveland PCH Residential Living, LLC's cross-motion for summary judgment [23] is

GRANTED; therefore,

(3) All of the plaintiff's claims are **DISMISSED WITH PREJUDICE;** and

(4) This case is **CLOSED.**

SO ORDERED this the 5th day of February, A.D., 2009.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE